

URGENCY ORDINANCE NO. 1723

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF SAN CLEMENTE ADDING CHAPTERS 16.50
AND 17.86 AND AMENDING SECTION 17.52.020 TO THE
SAN CLEMENTE MUNICIPAL CODE TO REGULATE
URBAN LOT SPLITS AND TWO-UNIT PROJECTS UNDER
SB 9; AND FINDING THE ACTION TO BE EXEMPT FROM
CEQA**

WHEREAS, the City of San Clemente, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 ("SB 9"), which among other things, adds Government Code section 65852.21 and 66411.7 to impose new limits on local authority to regulate urban lot splits and two-unit projects; and

WHEREAS, SB 9 allows local agencies to adopt objective zoning, subdivision, and design review standards for urban lot splits and two-unit projects; and

WHEREAS, SB 9 takes effect January 1, 2022, and preempts any conflicting city regulation; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of the new SB 9 Law because if the City does not adopt appropriate objective standards for urban lot splits and two-unit projects under SB 9 as of January 1, 2022, the City would thereafter be limited to applying the few objective standards that are already in its code and that do not conflict with SB 9, which did not anticipate and were not enacted with urban lot splits and ministerial two-unit projects in mind; and

WHEREAS, the approval of urban lot splits and two-unit projects based solely on the City's default standards, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values,

personal privacy, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective immediately upon adoption by a four-fifths vote of the City Council; and

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this ordinance as an urgency measure in accordance with Government Code section 36937, subdivision (b).

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 66411.7 and 65852.21 and regulating urban lot splits and two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA"). Therefore, adoption of this ordinance is statutorily exempt from CEQA because it implements these new laws enacted by SB 9.

Section 3. The San Clemente Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect immediately upon its adoption.

Section 5. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

Section 6. The City Council hereby directs staff to prepare, execute, and file with the Orange County Clerk a notice of exemption within five working days of the adoption of this ordinance.

Section 7. The custodian of records for this ordinance is the San Clemente city clerk, and the records comprising the administrative record for this ordinance are located at 910 Calle Negocio, San Clemente, CA 92673.

(Continues on next page)

APPROVED AND ADOPTED this 7th day of December, 2021.

ATTEST:



City Clerk of the City of
San Clemente, California



Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

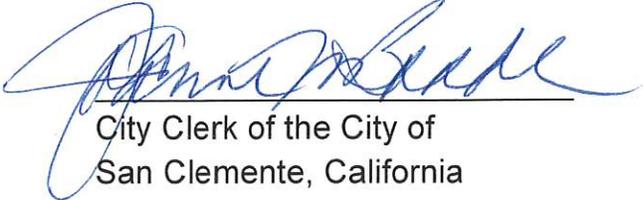
I, **JOANNE BAADÉ**, City Clerk of the City of San Clemente, California, hereby certify that Urgency Ordinance No. 1723 was duly passed and adopted at a regular meeting of the City Council held on the 7th day of December, 2021, and said ordinance was adopted by the following vote:

AYES: DUNCAN, FERGUSON, KNOBLOCK, WARD, MAYOR JAMES

NOES: NONE

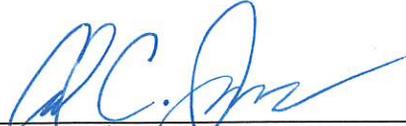
ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 16TH day of December, 2021.



City Clerk of the City of
San Clemente, California

APPROVED AS TO FORM:



City Attorney

EXHIBIT A

Amendments to Municipal Code

(follows this page)

Chapter 16.50 is hereby added to the San Clemente municipal code to read as follows:

Chapter 16.50 – State-mandated Subdivisions.

Section 16.50.010 – Urban Lot Splits.

- A. **Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.
- B. **Definition.** An “urban lot split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.
- C. **Application.**
1. **Owners.**
 - a. Only individual property owners may apply for an urban lot split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).
 - b. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project.
 2. An application for an urban lot split must be submitted on the city’s approved form. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
 3. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.
- D. **Approval.**
1. An application for a parcel map for an urban lot split is approved or denied ministerially, by the director of community development, without discretionary review.

2. A tentative parcel map for an urban lot split is approved ministerially if it complies with all the requirements of this section. The tentative parcel map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements. The tentative parcel map expires three months after approval.
3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

E. **Requirements.** An urban lot split must satisfy each of the following requirements:

1. **Map Act Compliance.**

- a. The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., "SMA") and implementing requirements in this title, except as otherwise expressly provided in this section.
- b. If an urban lot split violates any part of the SMA, the city's subdivision regulations, including this section, or any other legal requirement:
 - (i) The buyer or grantee of a lot that is created by the urban lot split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.
 - (ii) The city has all the remedies available to it under the SMA, including but not limited to the following:
 - (A) An action to enjoin any attempt to sell, lease, or finance the property.
 - (B) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - (C) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
 - (D) Record a notice of violation.
 - (E) Withhold any or all future permits and approvals.

- c. Notwithstanding section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an urban lot split.
2. **Zone.** The lot to be split is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.
 3. **Lot Location.**
 - a. The lot to be split is not located on a site that is any of the following:
 - (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
 - (ii) A wetland.
 - (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
 - (iv) A hazardous waste site that has not been cleared for residential use.
 - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
 - (vi) Within a 100-year flood hazard area, unless the site has either:
 - (A) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
 - (B) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
 - (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
 - (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
 - (ix) Habitat for protected species.

- (x) Land under conservation easement.
 - b. The purpose of subpart E.3.a above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)
 - c. The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.
4. **Not Historic.** The lot to be split must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.
5. **No Prior Urban Lot Split.**
- a. The lot to be split was not established through a prior urban lot split.
 - b. The lot to be split is not adjacent to any lot that was established through a prior urban lot split by the owner of the lot to be split or by any person acting in concert with the owner. “Any person acting in concert with the owner” here includes any third-party that coordinates or assists the owners of two adjacent lots with their respective urban lot splits.
6. **No Impact on Protected Housing.**
- a. The urban lot split must not require or include the demolition or alteration of any of the following types of housing:
 - (i) Housing that is income-restricted for households of moderate, low, or very low income.
 - (ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
 - (iii) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
 - (iv) Housing that has been occupied by a tenant in the last three years.
 - b. As part of the urban lot split application, the applicant and the owner of a property must provide a sworn statement by affidavit representing and warranting that subpart E.6.a above is satisfied.
 - (i) The sworn statement must state that:

- (A) No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.
 - (B) No housing that is subject to any form of rent or price control will be demolished or altered.
 - (C) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
 - (D) No housing that has been occupied by a tenant in the last three years will be demolished or altered.
- c. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

7. Lot Size.

- a. The lot to be split must be at least 2,400 square feet.
- b. The resulting lots must each be at least 1,200 square feet.
- c. Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

8. Easements.

- a. The owner must enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.
- b. Each easement must be shown on the tentative parcel map.
- c. Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with section D.2 above.
- d. If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the city will provide, a notice of termination of the easement, which the owner may record.

9. Lot Access.

- a. Each resulting lot must adjoin the public right of way.
- b. Each resulting lot must have frontage on the public right of way of at least 12.5 feet.

10. **Unit Standards.**

- a. **Quantity.** No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 17.86.010 of this code, an ADU, or a JADU
- b. **Unit Size.**
 - (i) The total floor area of each primary dwelling that is developed on a resulting lot must be
 - (A) less than or equal to 800 square feet and
 - (B) more than 500 square feet.
 - (ii) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.
 - (iii) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.
- c. **Height Restrictions.**
 - (i) On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
 - (ii) On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the setback.
 - (iii) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

- d. **Lot Coverage.** Lot coverage may not exceed 50 percent of the lot. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- e. **Open Space.** A minimum of 50 percent of the lot must be maintained as open space. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- f. **Setbacks.**
 - (i) **Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
 - (ii) **Exceptions.** Notwithstanding subpart E.10.f(i) above:
 - (A) **Existing Structures.** No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - (B) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
 - (iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split must be at least 30 feet from the front property lines. The front setback areas must:
 - (A) be kept free from all structures greater than three feet high;
 - (B) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;
 - (C) allow for vehicular and fire-safety access to the front structure.
- g. **Parking.** Each new primary dwelling unit that is built on a lot after an urban lot split must have at least one off-street parking space per unit unless one of the following applies:
 - (i) The lot is located within one-half mile walking distance of either

- (A) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
- (B) a site that contains
 - (1) an existing rail or bus rapid transit station,
 - (2) a ferry terminal served by either a bus or rail transit service, or
 - (3) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- (ii) The site is located within one block of a car-share vehicle location.

h. **Architecture.**

- (i) If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (ii) If there is no legal primary dwelling on the lot before the urban lot split, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (iii) All exterior lighting must be limited to down-lights.
- (iv) No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (v) If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

i. **Landscaping.**

- (i) **Tree Removal.**
 - (A) No mature tree may be removed on a lot with any development under this section unless removal is necessary to constructing a dwelling unit that must be allowed under state law.
 - (B) "Mature tree" means a tree with a diameter of six inches or more or a height of eight feet or taller.
 - (C) A tree may only be removed under subparagraph E.10.i(i)(A) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.
 - (D) If a certified arborist determines that there is not space on the lot for a replacement tree that is required under subparagraph E.10.i(i)(C) above, owner may pay the replacement cost of the tree, as determined by the city's tree-replacement cost schedule.
- (ii) **Screening.** Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
 - (A) According to a planting and irrigation plan that is prepared by a licensed landscape architect.
 - (B) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.
 - (C) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.
 - (D) All landscaping must be drought-tolerant.
 - (E) All landscaping must be from the city's approved plant list.
- j. **Nonconforming Conditions.** An urban lot split is approved without requiring a legal nonconforming zoning condition to be corrected.
- k. **Utilities.**
 - (i) Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.

(ii) Notwithstanding paragraph E.10.k(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

(iii) All utilities must be underground.

l. **Building & Safety.** All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.

11. **Fire-Hazard Mitigation Measures.**

a. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

(i) It must have direct access to a public right of way with a paved street with a width of at least 40 feet. The public right of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(ii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

(iii) All enclosed structures on the site must have fire sprinklers.

(iv) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.

(v) If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart E.11. The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

12. **Separate Conveyance.**

- a. Within a resulting lot.
 - (i) Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.
 - (ii) Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.
 - (iii) All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.
 - (iv) No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.
- b. Between resulting lots. Separate conveyance of the resulting lots is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the urban lot split boundary may separate them for conveyance purposes if the structures meet building code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner must record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

13. **Regulation of Uses.**

- a. **Residential-only.** No non-residential use is permitted on any lot created by urban lot split.
- b. **No Short-term Rentals.** No dwelling unit on a lot that is created by an urban lot split may be rented for a period of less than 30 days.
- c. **Owner Occupancy.** The applicant for an urban lot split must sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of three years after the urban lot split is approved.

14. **Notice of Construction.**

- a. At least 30 business days before starting any construction of a structure on a lot created by an urban lot split, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:
 - (i) Notice that construction has been authorized,

- (ii) The anticipated start and end dates for construction,
 - (iii) The hours of construction,
 - (iv) Contact information for the project manager (for construction-related complaints), and
 - (v) Contact information for the Building & Safety Department.
- b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.
15. **Deed Restriction.** The owner must record a deed restriction on each lot that results from the urban lot split, on a form approved by the city, that does each of the following:
- a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
 - b. Expressly prohibits any non-residential use of the lots created by the urban lot split.
 - c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
 - d. States that:
 - (i) The lot is formed by an urban lot split and is therefore subject to the city's urban lot-split regulations, including all applicable limits on dwelling size and development.
 - (ii) Development on the lot is limited to development of residential units under section 17.86.010 of this code, except as required by state law.
- F. **Specific Adverse Impacts.**
1. Notwithstanding anything else in this section, the city may deny an application for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).
 3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.
- G. **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

Chapter 17.86 is hereby added to the San Clemente municipal code to read as follows:

Chapter 17.86 – State-mandated Residential Projects

Section 17.86.010 – Two-unit Projects

- A. **Purpose.** The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.
- B. **Definition.** A "two-unit project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot in accordance with the requirements of this section.
- C. **Application.**
 1. **Owners.**
 - a. Only individual property owners may apply for a two-unit project. "Individual property owner" means a natural person holding fee title individually or jointly in the person's own name or a beneficiary of a trust that holds fee title. "Individual property owner" does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Rev. & Tax Code § 214.15).
 - b. Any person with a mortgage interest in the lot to be developed with a two-unit project under this section must sign the application indicating the person's consent to the project.

2. An application for a two-unit project must be submitted on the city's approved form.
3. The applicant must obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.
4. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
5. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.

D. Approval.

1. An application for a two-unit project is approved or denied ministerially, by the director of community development, without discretionary review.
2. The ministerial approval of a two-unit project does not take effect until the city has confirmed that the required documents have been recorded, such as the deed restriction and easements.
3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

E. Requirements. A two-unit project must satisfy each of the following requirements:

1. **Map Act Compliance.** The lot must have been legally subdivided.
2. **Zone.** The lot is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.
3. **Lot Location.**
 - a. The lot is not located on a site that is any of the following:
 - (i) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
 - (ii) A wetland.

- (iii) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
 - (iv) A hazardous waste site that has not been cleared for residential use.
 - (v) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
 - (vi) Within a 100-year flood hazard area, unless the site has either:
 - (A) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
 - (B) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
 - (vii) Within a regulatory floodway, unless all development on the site has received a no-rise certification.
 - (viii) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
 - (ix) Habitat for protected species.
 - (x) Land under conservation easement.
- b. The purpose of subpart E.3.a above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)
- c. The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.
4. **Not Historic.** The lot must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.
5. **No Impact on Protected Housing.**
- a. The two-unit project must not require or include the demolition or alteration of any of the following types of housing:

- (i) Housing that is income-restricted for households of moderate, low, or very low income.
 - (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.
 - (iii) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
 - (iv) Housing that has been occupied by a tenant in the last three years.
- b. As part of the urban lot split application, the applicant and the owner of a property must provide a sworn statement by affidavit representing and warranting that subpart E.5.a above is satisfied.
- (i) The sworn statement must state that:
 - (A) No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.
 - (B) No housing that is subject to any form of rent or price control will be demolished or altered.
 - (C) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
 - (D) No housing that has been occupied by a tenant in the last three years will be demolished or altered.
- c. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

6. Unit Standards.

a. Quantity.

- (i) No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under this section of this code, an ADU, or a JADU.

- (ii) A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that must be allowed under state law and the city's ADU ordinance.
- b. **Unit Size.**
 - (i) The total floor area of each primary dwelling built that is developed under this section must be
 - (A) less than or equal to 800 square feet and
 - (B) more than 500 square feet.
 - (ii) A primary dwelling that was legally established on the lot prior to the two-unit project and that is larger than 800 square feet is limited to the lawful floor area at the time of the two-unit project. The unit may not be expanded.
 - (iii) A primary dwelling that was legally established prior to the two-unit project and that is smaller than 800 square feet may be expanded to 800 square feet after or as part of the two-unit project.
- c. **Height Restrictions.**
 - (i) On a lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.
 - (ii) On a lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the setback.
 - (iii) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a two-unit project.
- d. **Demo Cap.** The two-unit project may not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.
- e. **Lot Coverage.** Lot coverage may not exceed 50 percent of the lot. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

- f. **Open Space.** At least 50 percent of the lot must be maintained as open space. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.
- g. **Setbacks.**
 - (i) **Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone.
 - (ii) **Exceptions.** Notwithstanding subpart E.6.g(i) above:
 - (A) **Existing Structures.** No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.
 - (B) **800 sf; four-foot side and rear.** The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.
 - (iii) **Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed under this section must be at least 25 feet from the front property lines. The front setback area must:
 - (A) be kept free from all structures greater than three feet high;
 - (B) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;
 - (C) allow for vehicular and fire-safety access to the front structure.
- h. **Parking.** Each new primary dwelling unit must have at least one off-street parking space per unit unless one of the following applies:
 - (i) The lot is located within one-half mile walking distance of either
 - (A) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
 - (B) a site that contains

- (1) an existing rail or bus rapid transit station,
- (2) a ferry terminal served by either a bus or rail transit service, or
- (3) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(ii) The site is located within one block of a car-share vehicle location.

i. **Architecture.**

- (i) If there is a legal primary dwelling on the lot that was established before the two-unit project, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (ii) If there is no legal primary dwelling on the lot before the two-unit project, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- (iii) All exterior lighting must be limited to down-lights.
- (iv) No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- (v) If any portion of a dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

j. **Landscaping.**

(i) **Tree Removal.**

- (A) No mature tree may be removed on a lot with any development under this section unless removal is necessary to constructing a dwelling unit that must be allowed under state law.

- (B) "Mature tree" means a tree with a diameter of six inches or more or a height of eight feet or taller.
 - (C) A tree may only be removed under subparagraph E.6.j(i)(A) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.
 - (D) If a certified arborist determines that there is not space on the lot for a replacement tree that is required under subparagraph E.6.j(i)(C) above, owner may pay the replacement cost of the tree, as determined by the city's tree-replacement cost schedule.
- (ii) **Screening.** Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:
- (A) According to a planting and irrigation plan that is prepared by a licensed landscape architect.
 - (B) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24" box size plant shall be provided for every ten linear feet of exterior wall.
 - (C) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.
 - (D) All landscaping must be drought-tolerant.
 - (E) All landscaping must be from the city's approved plant list.
- k. **Nonconforming Conditions.** A two-unit project may only be approved if all nonconforming zoning conditions are corrected.
- l. **Utilities.**
- (i) Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.
 - (ii) Notwithstanding paragraph E.6.l(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five

years or, if the percolation test has been recertified, within the last 10 years.

(iii) All utilities must be underground.

m. **Building & Safety.** All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot, and all structures, to the city's current code.

7. **Fire-Hazard Mitigation Measures.**

- a. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:
- (i) It must have direct access to a public right of way with a paved street with a width of at least 40 feet. The public right of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.
 - (ii) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.
 - (iii) All enclosed structures on the site must have fire sprinklers.
 - (iv) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.
 - (v) If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.
- b. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart E.7. The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

8. **Separate Conveyance.**

- a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

- b. Condominium airspace divisions and common interest developments are not permitted within the lot.
- c. All fee interest in the lot and all the dwellings must be held equally and undivided by all individual property owners.
 - (i) No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

9. **Regulation of Uses.**

- a. **Residential-only.** No non-residential use is permitted on the lot.
- b. **No Short-term Rentals.** No dwelling unit on the lot may be rented for a period of less than 30 days.
- c. **Owner Occupancy.** Unless the lot was formed by an urban lot split, the individual property owners of a lot with a two-unit project must occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

10. **Notice of Construction.**

- a. At least 30 business days before starting any construction of a two-unit project, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:
 - (i) Notice that construction has been authorized,
 - (ii) The anticipated start and end dates for construction,
 - (iii) The hours of construction,
 - (iv) Contact information for the project manager (for construction-related complaints), and
 - (v) Contact information for the Building & Safety Department.
- b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

11. **Deed Restriction.** The owner must record a deed restriction, on a form approved by the city, that does each of the following:
 - a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
 - b. Expressly prohibits any non-residential use of the lot.
 - c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
 - d. If the lot does not undergo an urban lot split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.
 - e. Limits development of the lot to residential units that comply with the requirements of this section, except as required by state law.

F. **Specific Adverse Impacts.**

1. Notwithstanding anything else in this section, the city may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
2. "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).
3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

G. **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

H. **Remedies.**

If a two-unit project violates any part of this code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The city may:
 - a. Bring an action to enjoin any attempt to sell, lease, or finance the property.
 - b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.
 - c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.
 - d. Record a notice of violation.
 - e. Withhold any or all future permits and approvals.
 - f. Pursue all other administrative, legal, or equitable remedies that are allowed by law or the city's code.

Section 17.52.020 of the San Clemente municipal code is hereby amended to read in its entirety as follows (adding a new subsection B, renumbering the rest):

Section 17.52.020 – Applicability.

- A. The provisions in this section shall apply to all areas designated in the City of San Clemente General Plan Land Use Element as requiring a specific plan, including the following:
 1. Properties for which a specific plan has not been prepared, but for which a specific plan is required prior to development in accordance with the City's General Plan; and
 2. Properties for which a specific plan has been prepared and adopted by the City Council, and which are currently designated with the name of their specific plan.
- B. Notwithstanding anything else in this code or in a specific plan:
 1. Any project proposed in a specific plan under the authority of Government Code section 65852.21 is subject to Chapter 16.50.
 2. Any project proposed in a specific plan under the authority of Government Code section 66411.7 is subject to Chapter 17.86.

